IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.09.2004

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE K.RAVIRAJA PANDIAN

W.P.NO.25081 OF 2002 AND W.P.M.P.NO.34438 OF 2002

Mohan Breweries and Distilleries Limited
No.112, M.M.Nagar, Valasaravakkam
Chennai - 600 087. ... Petitioner

Vs.

1. The Commercial Tax Officer
   Porur Assessment circle
   No.3, Arcot Road,
   Alwarthirunagar
   Chennai - 600 087

2. The Principal Commissioner and
   Commissioner of Commercial Taxes
   Department of Commercial Taxes
   Government of Tamil Nadu
   Ezhilagam
   Chepauk
   Chennai - 600 005

3. The Tamil Nadu Taxation Special
   Tribunal, represented by its
   Registrar, Second Floor
   Singaravelar Maaligai
   Chennai - 600 001. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of a writ of certiorarified mandamus quashing the proceedings of R3 in OP No.476/02 dt.26.6.2002 confirming the orders of R1 in TNGST 1380110/96-97 dt.27.3.02 while directing the R1 to pass fresh orders giving effect to the circulars of D.Dis.Acts. Cell.I/105980/88 dt. 9.11.89 and D.Dis.Acts.Cell.II/ 52900/2000 dt.27.12.2000 of R2.

For Petitioner : Mr.C.Natarajan,Sr.Counsel
for Mr.N.Inbarajan

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For Respondents: Mr.T.Ayyasamy,Spl.Govt.
Pleader (Taxes) for
RR1 and 2.

ORDER

(Order of the Court was made by P.D.DINAKARAN, J,.)

I - ISSUES:

The questions that arise for our consideration in this writ petition are:

(i) Whether the purchase turnover of empty bottles purchased by the petitioner Company, who are engaged in the business of manufacturing Beer and IMFL products, from unregistered dealers for bottling Beer and IMFL manufactured by them, through the bought note to the extent of Rs.24,78,20,465.00 is attracted for purchase tax under Section 7-A of the Tamil Nadu General Sales Tax Act (for brevity "the Act')?;

(ii) Whether purchase tax is leviable on the purchase turnover of the empty bottles purchased by the petitioner Company to the extent of Rs.24,78,20,465.00, under Section 7-A of the Act, in spite of the clarifications dated 9.11.1989 and 27.12.2000 issued in favour of the petitioner Company by the Special Commissioner and Commissioner of Commercial Taxes, Chennai, in view of Section 28A of the Act?; and

(iii) Whether cash discount on the price offered by the petitioner Company to the TASMAC is taxable in view of explanation 2(iii) to Section 2(r) of the Act?.

II - RELEVANT FACTS:

2.1. The brief facts of the case, so far as they are relevant for the disposal of this petition are:

The petitioner is a Company incorporated under the Companies Act. They are engaged in the business of manufacture of beer and IMFL products in their factory located at No.7, Selva Street, M.M.Nagar, Valasaravakkam, Chennai - 600 087.

2.2. The petitioner Company was finally assessed on a total and taxable turnover of Rs.2,52,33,32,932.00 and Rs.2,49,65,22,854.00 respectively by an assessment order dated 21.10.1998 for the assessment year 1996-97 under the Act.

2.3. The petitioner effected the purchase of empty bottles as

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shown below:

Transfer of bottles from Pondicherry Captive Consumption – Against Form 'F'	8,23,96,234.00
Purchase of bottles from other State – Against Form 'C'	85,93,510.00
Purchases of bottles – Bought Note through Salesmen permits	24,78,20,465.00
Total	33,88,10,209.00

2.4. The first respondent/assessing authority, by a notice dated 30.4.1999, proposed to levy purchase tax under Section 7-A of the Act on the purchase of empty bottles effected from unregistered dealers under bought note through salesmen permits, viz., on a sum of Rs.24,78,20,465.00, at the rate of 16%, with surcharge and additional surcharge; and additional tax that would be levied in the above taxable turnover at the rate of 2.50%, and called for objections from the petitioner.

2.5. In response to the said notice dated 30.4.1999, the petitioner/Company submitted their objections on 27.9.1999 to the effect that the purchase of empty bottles for packing Beer and IMFL products are not attracted under Section 7-A of the Act for levy of purchase tax and in any event, the same is illegal and unjustified in view of the clarification issued by the Special Commissioner and Commissioner of Commercial Taxes dated 9.11.1989, inasmuch as such clarification is binding on the assessing authorities as per Section 28-A of the Act. The petitioner also placed reliance on the proceedings of the Appellate Assistant Commissioner (CT), Chennai with respect to the assessment years 1986-87, 1987-88 and 1988-89 holding that imposition of purchase tax on the purchase of empty bottles is illegal and unjustified.

2.6. Before passing final orders on the objections made by the petitioner dated 27.9.1999 to the notice dated 30.4.1999, the Principal Commissioner and Commissioner of Commercial Taxes, Chennai in his proceedings dated 27.12.2000 further clarified that the purchase of empty bottles during the assessment years 1991-92, 1993-94, 1994-95 and 1995-96 could not be made liable to be charged under Section 7-A of the Act to levy purchase tax, as the clarification dated 9.11.1989 was still in force and the same would also apply for the assessment years 1991-92, 1993-94, 1994-95 and 1995-96.

2.7. However, the Special Commissioner and Commissioner of Commercial Tax, in his proceedings dated 28.1.2002, clarified that the

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purchase of empty bottles from unregistered dealers used for packing of Beer and IMFL products is liable to tax under Section 7-A of the Act.

2.8. That apart, the Assessing Authority, by notice dated 5.2.2002, proposed to revise the assessment notice dated 29.10.1998 for the assessment year 1996-97 by disallowing the exemption on cash discount allowed by the petitioner to TASMAC; to levy tax on the said cash discount; to levy surcharge and additional surcharge at the rate of 15% and 5% respectively; and additional sales tax.

2.9. In response to the notice dated 5.2.2002, the petitioner Company, by their letter dated 18.3.2002, placing reliance on explanation 2(iii) to Section 2(r) of the Act submitted that any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover.

2.10. On receipt of the objection dated 27.9.1999 submitted to the notice dated 30.4.1999 and the further objection dated 18.3.2002 to the notice dated 5.2.2002, the assessing authority passed a revised order on 27.3.2002 levying purchase tax on the purchase turnover for the purchase of empty bottles from unregistered dealers under Section 7-A of the Act at the rate of 16%, and also levying surcharge and additional surcharge, as well as additional sales tax, as follows:

> "... The assessment already made under the TNGST Act'59 for the year 1996-97 vide this office proceedings in TNGST-1380110/96-97, dated 29.10.1998 is revised under Section 16(1)(a) of the TNGST Act'59 and the total and taxable turnover of the dealers for the year 1996-97 under the TNGST Act'59 is refixed and assessed to tax as detailed below:

1	Taxable turnover already determined and assessed to tax at the various rate of tax as per order in TNGST-1380110/96-97 dated 29.10.1998		
	i) 1.4.96 to 16.7.96	= Rs.	73,86,65,644.00
	ii) from 17.7.96 to 31.3.97	= Rs.	1,75,78,57,210.00
2	Add purchases of empty bottles from un-registered dealers brought to assessment and assessed to tax @ 16% u/s7-A of the TNGST Act-1959	= Rs.	24,78,20,465.00

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3	ADD: Exemption allowed already on cash discount allowed to TASMAC is disallowed and brought to assessment and assessed to tax @		
	i) 25% from 1.4.96 to 16.7.96	= Rs.	59,66,788.00
	ii) 30% from 17.7.96 to 31.3.97	= Rs.	1,68,22,630.00
4	Taxable turnover redetermined	Rs.	276,71,32,787.00
5	Add exemption allowed already in the assessment order in TNGST.1380110/96-97 dated 29.10.98 excluding the cash discount allowed to TASMAC which is now brought to assessment in Col.3 above	= Rs.	40,20,660.00
6	Total Turnover re-determined	Rs.	277,11,53,447.00
	i) Tax due at the various rates to the taxable turnover already assessed	= Rs.	70,91,55,015.00
	(ii) Tax due @ 16% on Rs.24,78,20,465.00	= Rs.	3,96,51,274.00
	(iii) Tax due @ 25% on Rs.59,66,788.00	= Rs.	14,91,697.00
	(iv) Tax due @ 30% on Rs.1,68,22,630.00	= Rs.	50,46,789.00
	Total tax Due	Rs.	75,53,44,775.00
	Tax paid which includes the refund of excess penalty ordered in this order Rs.68,36,825.00	= Rs.	71,59,91,840.00
	Balance due	Rs.	3,93,52,935.00

A Demand notice in Form 'B3' is issued.

1	Surcharge due @ 15% on the tax due of Rs.18,41,34,126.00 already levied in the Assessment order in TNGST No.1380110/96-97, dated 29.10.1998 except tax due on the sale of M.S.Scraps	= Rs.	2,76,20,119.00

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2	Surcharge due @ 15% on the tax due of Rs.14,91,697.00 on the turnover now determined upto 16.7.1996	=	Rs.	2,23,755.00
3	Total Surcharge due		Rs.	2,78,43,874.00
4	Total Surcharge paid		Rs.	2,76,20,119.00
	Balance		Rs.	2,23,755.00

A demand notice in Form 'U' is issued for surcharge balance.

1	Additional Surcharge due @ 5% on the tax due of Rs.184134126.00 except tax due on the sale of M.S.Scrap already levied in the assessment order in TNGST No.1380110/96-97, dated 29.10.1998	=	Rs.	92,04,717.00
2	ASC due @ 5% on the tax due of Rs.14,91,697.00 on the turnover now determined upto 16.7.1996	=	Rs.	74,585.00
3	Total ASC due		Rs.	92,79,302.00
4	Total ASC paid		Rs.	92,04,717.00
	Balance			Rs.74,585.00

A demand notice in Form 'U' is issued for ASC balance.

1	Additional Sales tax due @ 2.5% on the taxable turnover of Rs.249,57,18,413.00 which excluded the sales of M.S.Scrap for Rs.8,04,441.00 already levied in the Assessment order in TNGST No.1380110/96-97, dated 29.10.1998	=	Rs.	6,23,92,960.00
2	Additional Sales Tax due @ 2.5% on the taxable turnover of Rs.27,06,09,933.00 now assessed	=	Rs.	67,65,248.00
3	Total Addl. Sales tax due		Rs.	6,91,58,208.00
4	Add Sales tax paid		Rs.	6,23,92,960.00

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Balance Rs. 67,65,248.00

A demand notice in Form 'N3' is issued."

(emphasis supplied)

2.11. Aggrieved by the said proceedings of the first respondent, the petitioner company preferred O.P.No.476 of 2002 before the Tamil Nadu Taxation Special Tribunal, Chennai seeking to quash the proceedings of the first respondent dated 27.3.2002 and to direct the first respondent to give effect to the clarifications dated 9.11.1989 and 27.12.2000.

2.12. The Tribunal, by order dated 26.6.2002, taking note of the amendment brought in vide the Tamil Nadu Act 78 of 1986 held that the ratio laid down in the decision in ASSOCIATED PHARMACEUTICAL INDUSTRIES (P) LTD. v. STATE OF TAMIL NADU, [1986] 63 STC 316 is not applicable as the same was rendered prior to the amendment of Section 7-A(1)(a) of the Act and held that the purchase turnover for the purchase of empty bottles from the unregistered dealers attracts purchase tax under Section 7-A of the Act; and that in view of the clarification dated 28.1.2002, the earlier clarifications dated 9.11.1989 and 27.12.2000 could not be relied upon and thus, refused to interfere with the order of the first respondent dated 27.3.2002. Hence, the petitioner Company has preferred this writ petition for issue of a writ of Certiorarified Mandamus to call for the records on the file of the third respondent in O.P.No.476/2002 dated 26.6.2002 confirming the orders of the first respondent in T.N.G.S.T.No.1380110/96-97 dated 27.3.2002 and quash the same, while directing the first respondent to pass fresh orders giving effect to the clarifications in D.Dis.Acts.Cell.I/105980/88 dated 9.11.1989 and D.Dis.Acts.Cell.II/52900/2000 dated 27.12.2000 of the second respondent.

III - CONTENTIONS MADE ON BEHALF OF THE WRIT PETITIONER/ASSESSEE:

3.1.1. Mr.C.Natarajan, learned senior counsel for the petitioner contends that the purchase turnover to the extent of Rs.24,78,20,465.00 towards the purchase of empty bottles through bought note from the unregistered dealers cannot be charged for the purchase tax under section 7-A of the Act.

3.1.2. According to Mr.C.Natarajan, learned Senior Counsel appearing for the petitioner/Company, TASMAC is the sole purchaser of Beer and IMFL products from the petitioner in cases and the consideration is also paid only per case, viz., the consideration paid by TASMAC was not only for the Beer or IMFL products contained in the bottle, but also for the bottles themselves in which the Beer or IMFL was packed.

3.1.3. Mr.C.Natarajan, learned Senior Counsel contends that the

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bottles which contained Beer and IMFL product are themselves sold. There are two sales involved in the transaction between the petitioner and TASMAC, viz., (i) sale of Beer and IMFL products; and (ii) sale of the bottles in which the Beer or IMFL products are packed.

3.1.4. Mr.C.Natarajan, learned senior counsel points out that the manufacturing cost of the Beer per case was worked out to Rs.109.93 per case including the cost of the bottle for packing Beer that was worked out to a sum of Rs.35.69 per case. Thus, the cost of the Beer bottle alone constituted 32% of the manufacturing cost. Similarly, the cost of manufacture of IMFL product per case was worked out to Rs.217.06 per case including the cost of the bottle to pack IMFL product that was worked out to Rs.60.46 per case and thus, the cost of IMFL bottle alone constituted 28% of the manufacturing cost.

3.1.5. It is, therefore, argued that even though the transaction of sale of Beer or IMFL products by the petitioner to TASMAC includes two sales, viz., (i) sale of Beer and IMFL products; and (ii) sale of the bottles in which the Beer or IMFL products are packed, both sales are integrated components of a single sale transaction. Therefore, the price of the bottles is always a component of the sale price of the Beer and IMFL product. When Beer and IMFL products are taxed, the value of the bottles are also taxed. Hence, Section 7-A of the Act is not applicable for the purchase of empty bottles from the unregistered dealers under bought note.

3.1.6. Mr.C.Natarajan, inviting our attention to the proceedings of the Appellate Assistant Commissioner (CT), Chennai with respect to the assessment years 1986-87, 1987-88 and 1988-89, contends that imposition of purchase tax on the purchase of empty bottles is unjustified.

3.1.7. In this regard, Mr.C.Natarajan, places reliance on the decisions in (i) THE DEPUTY COMMISJSIOENR (C.T.), COIMBATORE DIVISION, COIMBATORE – 18 v. VIJAYA TRADING COMPANY, [1980] 46 STC 400; and (ii) ASSOCIATED PHARMACEUTICAL INDUSTRIES (P) LTD. v. STATE OF TAMIL NADU, [1986] 63 STC 316, and contends that the purchase turnover of packing materials, in the instant case, the empty bottles, could not be brought to charge under Section 7-A of the Act to levy purchase tax.

3.2.1. Secondly, Mr.C.Natarajan, learned senior counsel, relying on the decision in COLLECTOR OF CENTRAL EXCISE, PATNA v. USHA MARTIN INDUSTRIES, [1998] 111 STC 254, contends that as per the rules of interpretation, when two opinions are possible, the one which is in favour of the assessee should be applied.

3.2.2. Citing the decision in THE STATE OF TAMIL NADU v. M.K.KANDASWAMI & OTHERS, [1975] 36 STC 191, wherein it was held that the main object of Section 7-A of the Act is to plug leakage and prevent evasion of tax, Mr.C.Natarajan, learned Senior counsel,

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contends that since the petitioner had already paid tax for Beer and IMFL products as well as on the price of the containers, viz., the bottles, the main object of Section 7-A of the Act has been achieved. It is also contended that if more than one construction is possible, the one which preserves its workability and efficacy is to be preferred as against the one which would render it otiose and sterile. According to Mr.C.Natarajan, since Section 7-A of the Act is enacted to plug leakage and prevent evasion of tax, when the same is achieved by payment of tax for the sale of Beer and IMFL products as well as the containers, namely bottles, there is no reason to give a different interpretation which would otherwise prejudice the interest of the assessee.

3.2.3. Mr.C.Natarjan, learned senior counsel placing reliance on the decision in (i) HMM LIMITED & ANOTHER v. ADMINISTRATOR, BANGALORE CITY COPRN. & ANOTHER, [1989] 4 SCC 640; and (ii) MAFATLAL INDUSTRIES LTD. v. NADIAD NAGAR PALIKA & ANOTHER, [2000] 3 SCC 1, contends that bottling of the Beer and IMFL products in the bottles, for marketing them, would not, by itself, render the assessee chargeable for purchase tax under Section 7-A of the Act, inasmuch as the bottles were not used for a separate and independent purpose other than for the sale of Beer and IMFL products for which the petitioner was already assessed to sales tax. According to Mr.C.Natarajan, the insertion of the words "or uses" by way of the Tamil Nadu Act 78 of 1986 would not in any way be a good and sufficient reason to distinguish the decision in ASSOCIATED PHARMACEUTICAL INDUSTRIES PRIVATE LIMITED v. THE STATE OF TAMIL NADU, [1986] 63 STC 316.

3.3. Thirdly, Mr.C.Natarajan, learned senior counsel contends that even assuming the purchase turnover towards the purchase of empty bottles attracts Section 7-A of the Act, the respondents are bound by the clarifications dated 9.11.1989 and 27.12.2000 issued in favour of the petitioner Company as the same were in force for the impugned assessment year 1996-97, in view of Section 28-A of the Act, till the said clarifications dated 9.11.1989 and 27.12.2000 were modified by a subsequent clarification dated 28.1.2002, which, could be given effect to only prospectively, viz., from the date of the clarification, viz., 28.1.2002. In this connection, Mr.C.Natarajan, learned senior counsel relies on the following decisions:

(i) STATE BANK OF TRAVANCORE v. C.I.T., [1986] 158 ITR 102;
(ii) KESHAVJI RAVJI & CO. v. COMMISSIONER OF INCOME TAX, [1990] 183 ITR 1;
(iii) COLLECTOR OR CENTRAL EXCISE, PATNA v. USHA MARTIN INDUSTRIES, [1998] 111 STC 254;
(iv) PAPER PRODUCTS LTD. v. COMMISSIONER OF CENTRAL EXCISE, [1999] 112 ELT 765;
(v) UCO BANK v. C.I.T., [1999] 237 ITR 889;
(vi) COMMISSIONER OF SALES TAX, U.P. v. INDRA INDUSTRIES, [2001] 122 STC 100;

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(vii) COMMISSIONER OF INCOME TAX v. KELVINATOR OF INDIA LTD., [2002] 256 ITR 1;
(viii) COLLECTOR OF CENTRAL EXCISE, VADODRA v. DHIREN CHEMICAL INDUSTRIES, [2002] 126 STC 122;
(ix) COLLECTOR OF CENTRAL EXCISE, VADODARA v. DHIREN CHEMICAL INDUSTRIES, [2002] 143 ELT 19; and
(x) COMMISSIONER OF CUSTOMS, CALCUTTA v. INDIAN OIL CORPORATION LTD., [2004] 165 ELT 257.

3.4. Lastly, Mr.C.Natarajan, learned senior counsel contends that only the amount which flows from the hands of the purchaser to the seller is taxable, but no other amount such as the cash discount, in view of explanation 2(iii) to Section 2(r) of the Act, as held by the Apex Court in NEYVELI LIGNITE CORPORATION LTD. v. THE COMMERCIAL TAX OFFICER, 124 STC 586.

IV - CONTENTIONS MADE ON BEHALF OF THE RESPONDENT/REVENUE:

4.1. Per contra, Mr.T.Ayyasamy, learned Special Government Pleader appearing for the respondents contends that the decision in ASSOCIATED PHARMACEUTICAL INDUSTRIES (P) LTD. v. STATE OF TAMIL NADU, [1986] 63 STC 316, is not applicable to the facts of the case in view of the amendment brought in Section 7-A(1)(a) of the Act whereunder the words "or uses" were inserted by the Tamil Nadu Act 78 of 1986.

4.2. By an amendment brought under the Tamil Nadu Act 78 of 1986 inserting the words "or uses" in Section 7-A(1)(a) of the Act, the legislature has expressly and unambiguously made it clear that the purchase turnover towards purchase of goods in the manufacture of other goods for sale or otherwise are chargeable for purchase tax, giving no room for two opinions one for levy of tax and the other for the benefit of the assessee. In this regard, Mr.T.Ayyasamy, learned Special Government Pleader relies on the decision in ASSISTANT COMMISSIONER (INTELLIGENCE) v. NANDANAM CONSTRUCTION COMPANY, [1999] 115 STC 427, whereunder the Apex Court dealt with Section 6-A(ii)(a) of the Andhra Pradesh General Sales Tax Act, which is pari materia to Section 7-A(1)(a) of the Tamil Nadu General Sales Tax Act.

4.3. Placing reliance on the decision in JAYAM TRADERS v. TAMIL NADU TAXN. SPL. TRIBUNAL [2004] 136 STC 302, it is contended that though the clarifications dated 9.11.1989 and 27.12.2000 may be binding on the revenue, they would not be binding on the assessee in cases where it is adverse to him and in which case, it is for the Court to decide whether the stand of the assessee is right and in accordance with the provisions of the Act.

4.4. According to Mr.T.Ayyasamy, learned Special Government Pleader the earlier clarifications dated 9.11.1989 and 27.12.2000 of the Special Commissioner and Commissioner of Commercial Taxes stand modified by issuance of the clarification dated 28.1.2002 and the

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correctness of the clarification dated 28.1.2002 cannot be gone into by this Court, unless the same is challenged by the assessee in appropriate legal proceedings. In this regard, the learned Special Government Pleader places reliance on the decision in AMUL PLOYCURE INDUSTRIES LTD. v. TAMIL NADU TAXATION SPECIAL TRIBUNAL & OTHERS, [2004] 134 STC 526.

4.5. Finally, Mr.Ayyasamy, learned Special Government Pleader contends that the cash discount allowed is nothing but a commission availed for early payment by TASMAC to the petitioner and therefore, the same is liable to be taxed.

V - CONSIDERATION AND FINDINGS:

5. We have given careful consideration to the submissions of both sides.

6. From the above rival contentions made on behalf of the assessee and the revenue, the following questions arise for our consideration:

(i) Whether the purchase turnover of empty bottles purchased by the petitioner Company, who are engaged in the business of manufacturing Beer and IMFL products, from unregistered dealers for bottling Beer and IMFL manufactured by them, through the bought note to the extent of Rs.24,78,20,465.00 is attracted for purchase tax under Section 7-A of the Tamil Nadu General Sales Tax Act (for brevity "the Act')?;

(ii) Whether purchase tax is leviable on the purchase turnover of the empty bottles purchased by the petitioner Company to the extent of Rs.24,78,20,465.00, under Section 7-A of the Act, in spite of the clarifications dated 9.11.1989 and 27.12.2000 issued in favour of the petitioner Company by the Special Commissioner and Commissioner of Commercial Taxes, Chennai, in view of Section 28A of the Act?; and

(iii) Whether cash discount on the price offered by the petitioner Company to the TASMAC is taxable in view of explanation 2(iii) to Section 2(r) of the Act?.

7.1. Question: (i) - Whether the purchase turnover of empty bottles purchased by the petitioner Company, who are engaged in the business of manufacturing Beer and IMFL products, from unregistered dealers for bottling Beer and IMFL manufactured by them, through the bought note to the extent of Rs.24,78,20,465.00 is attracted for purchase tax under Section 7-A of the Tamil Nadu General Sales Tax Act (for brevity "the Act')?

7.2. In this regard it is apt to refer Section 7-A(1)(a) of the

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Act before and after the amendment brought vide Tamil Nadu Act 78 of 1986, which came into effect from 1.1.1987.

Before Amendment:

"Section 7-A: Levy of purchase tax. -

(1) Every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods the sale or purchase of which is liable to tax under this Act in circumstances in which no tax is payable under sections 3, 4, or 5, as the case may be, either
(a) consumes such goods in the manufacture of other goods for sale or otherwise; or
(b) disposes of such goods in any manner other than by way of sale in the State; or
(c) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,

shall pay tax on the turnover relating to the purchase aforesaid at the rate mentioned in section 3,4 or 5, as the case may be, whatever be the quantum of such turnover in a year:

Provided that a dealer other than a casual trader or agent of a non-resident dealer purchasing goods the sale of which is liable to tax under sub-section (1) of section (3) shall not be liable to pay tax under this sub-section, if his total turnover for a year is less than one lakh of rupees.

(2) Notwithstanding anything contained in sub-section (1), the provisions of Section 7 shall apply to a dealer referred to in sub-section (1) who purchases goods (the sale of which is liable to tax under sub-section (1) of Section 3) and whose total turnover for a year is not less than one lakh of rupees but not more than to two lakhs of rupees and such a dealer may, at his option, instead of paying the tax in accordance with the provisions of sub-section (1), pay tax at the rates mentioned in sub-section (1) of Section 7.

(3) Every dealer liable to pay purchase tax under sub-section (1), shall, for the purposes of this Act, be deemed to be a registered dealer."

After Amendment:

"Section 7-A: Levy of purchase tax. -

(1) Every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods

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the sale or purchase of which is liable to tax under this Act in circumstances in which no tax is payable under sections 3, 4, or 5, as the case may be, either
(a) consumes or uses such goods in the manufacture of other goods for sale or otherwise; or
(b) disposes of such goods in any manner other than by way of sale in the State; or
(c) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,

shall pay tax on the turnover relating to the purchase aforesaid at the rate mentioned in section 3,4 or 5, as the case may be, whatever be the quantum of such turnover in a year:

Provided that a dealer other than a casual trader or agent of a non-resident dealer purchasing goods the sale of which is liable to tax under sub-section (1) of section (3) shall not be liable to pay tax under this sub-section, if his total turnover for a year is less than one lakh of rupees.

(2) Notwithstanding anything contained in sub-section (1), the provisions of Section 7 shall apply to a dealer referred to in sub-section (1) who purchases goods (the sale of which is liable to tax under sub-section (1) of Section 3) and whose total turnover for a year is not less than one lakh of rupees but not more than to two lakhs of rupees and such a dealer may, at his option, instead of paying the tax in accordance with the provisions of sub-section (1), pay tax at the rates mentioned in sub-section (1) of Section 7:

Provided that this sub-section shall not apply to the purchase made on or after the 1st day of April, 1990.

(3) Every dealer liable to pay purchase tax under sub-section (1), shall, for the purposes of this Act, be deemed to be a registered dealer."

7.3. Accordingly, the expression "or uses" was inserted by the Tamil Nadu Act 78 of 1986 which came into effect from 1.1.1987.

7.4.1. In THE DEPUTY COMMISSIONER (C.T.), COIMBATORE v. VIJAYA TRADING CO., [1980] 46 STC 400, whereunder the dealer purchased empty tins which are used as container for oil in which he deals and the price he charges when selling the tinned oil includes the price for tin also, it was held that there was a sale of the tin as part of the tinned oil and therefore, Section 7-A would not be attracted.

7.4.2. In STATE OF TAMIL NADU v. ASSOCIATED SALES OF INDIA [1980] 46 STC 401, where folded clips purchased from unregistered persons and

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used in the manufacture of office files were charged for purchase tax under section 7-A(1)(a) of the Act, it was held as follows:

> "The language used in Section 7-A of the Tamil Nadu General Sales Tax Act, 1959, is "consumes such goods in the manufacture of other goods" and not "uses such goods in the manufacture of other goods". Accordingly, when folded clips were purchased from unregistered persons and used in the manufacture of office files, it could not be said that these folded clips were consumed in the manufacture of office files. Consequently, the purchase turnover of these folded clips does not attract tax under Section 7-A of the Act."

7.4.3. In ASSOCIATED PHARMACEUTICAL INDUSTRIES P. LTD. v. THE STATE OF TAMIL NADU, [1986] 63 STC 316, whereunder the assessee purchased and used bottles for the manufacture and sale of medicine, drugs or syrups, it was held that though without bottling the drugs and syrups manufactured could not be sold, that could not be a reason for holding that the process of manufacture of drugs and syrups was not complete unless they were bottled or put in suitable containers and hence it could not be said that the bottles have been used up in the process of manufacture and consequently, the purchase turnover of empty bottles could not be brought to charge under Section 7-A(1)(a) of the Act.

7.4.4. But, the above decisions, viz., (i) THE DEPUTY COMMISSIONER (C.T.), COIMBATORE v. VIJAYA TRADING CO., [1980] 46 STC 400; (ii) STATE OF TAMIL NADU v. ASSOCIATED SALES OF INDIA [1980] 46 STC 401;and (iii) ASSOCIATED PHARMACEUTICAL INDUSTRIES P. LTD. v. THE STATE OF TAMIL NADU, [1986] 63 STC 316 deal with Section 7-A(1)(a) of the Act prior to the amendment brought by the Tamil Nadu Act 78 of 1986, inserting the words "or uses" in Section 7-A(1)(a) of the Act.

7.4.5. It is true, the Apex Court in RAJ SHEEL & OTHERS v. STATE OF ANDHRA PRADESH & OTHERS, [1989] 74 STC 379, held that to decide whether the transaction for sale of packing materials is an independent transaction would depend upon several factors, some of them being:

> (1) the packing material is a commodity having its own identity and is separately classified;
> (2) there is no change, chemical or physical, in the packing either at the time of packing or at the time of using the contents;
> (3) the packing is capable of being reused after the contents have been consumed;
> (4) the packing is used for convenience of transport and the quantity of the goods as such is not dependent on packing; and
> (5) the mere fact that the consideration for the packing is merged with the consideration for the product would not make

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the sale of packing an integrated part of the sale of the product.

7.4.6. This Court in SHAW WALLACE & CO. LTD. v. STATE OF TAMIL NADU, [1993] 90 STC 468, where the petitioner claimed that the packing charges could not be included in the taxable turnover and in any case, the packing materials could not be taxed at the same rate as the contents, namely the liquor, of course after referring the decision of the Apex Court in RAJ SHEEL & OTHERS v. STATE OF ANDHRA PRADESH & OTHERS, referred supra, and finding that from the invoices the description of the goods is always in terms of the number of cases, that is in the form of crates, rejected the contention that the sale of packing materials forms part of an independent commodity.

7.4.7. The Apex Court in PREMIER BREWERIES v. STATE OF KERALA, [1998] 108 STC 598 held that in calculating the turnover of the goods, packing materials would have to be taken into account. The packing material would be taxed at the same rate and at the same point as the goods contained in the packing material, because the goods were sold packed in containers and were charged accordingly, as a rule of computation of the turnover of the goods.

7.4.8. A Constitution Bench of the Apex Court in ASSISTANT COMMISSIONER (INTELLIGENCE) v. NANDANAM CONSTRUCTION CO., [1999] 115 STC 427, interpreting Section 6-A(ii)(a) of the Andhra Pradesh General Sales Tax Act, which is pari materia to Section 7-A(1)(a) of the Tamil Nadu General Sales Tax Act, as rightly pointed out by Mr.T.Ayyasamy, learned Special Government Pleader, observed that the object of Section 6-A(ii)(a) of the Andhra Pradesh General Sales Tax Act, 1957, is to levy purchase tax on goods purchased from persons other than registered dealers, either consumed for the purpose of manufacture of goods for sale or consumed otherwise. The intention of the legislature is to bring to purchase tax in either event of consumption of goods in the manufacture of goods for sale or consumption of goods in any other manner. Once the goods are utilised in the construction of buildings, the goods cease to exist or cease to be available in that form for sale or purchase so as to attract tax, and held that the assessee, who is engaged in building of flats and houses for which purpose they bought materials which had not suffered any sales tax such as sand, bricks and granite from persons other than registered dealers, were liable to purchase tax under Section 6-A(ii)(a) of the Andhra Pradesh General Sales Tax Act.

7.4.9. In this context, it is apt to refer the decision of the Apex Court in STATE OF TAMIL NADU v. M.K.KANDASWAMI & OTHERS, [1975] 36 STC 191, whereunder, the Three Judges of the Apex Court, while holding Section 7-A of the Act constitutionally valid, held as follows:

"It may be remembered that Section 7-A is at once a charging as

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well as a remedial provision. Its main object is to plug leakage and prevent evasion of tax. In interpreting such a provision, a construction which would defeat its purpose and, in effect, obliterate it from the statute book, should be eschewed. If more than one construction is possible, that which preserves its workability and efficacy is to be preferred to the one which would render it otiose or sterile."

(emphasis supplied)

7.4.10. In APPOLLO SALINE PHARMACEUTICALS (P) LTD., v. DEPUTY COMMERCIAL TAX OFFICER & ANOTHER, [2002] 125 STC 500, where the purchase of empty bottles from unregistered dealers were charged for purchase tax under Section 7-A of the Act, this Court applying the ratio laid down in ASSISTANT COMMISSIONER (INTELLIGENCE) v. NANDANAM CONSTRUCTION COMPANY, [1999] 115 STC 427, and also referring to the decision in STATE OF TAMIL NADU v. M.K.KANDASWAMI & OTHERS, [1975] 36 STC 191, held that in view of the amendment to Section 7-A of the Act inserting the words "or uses" under Section 7-A(1)(a) of the Act, the scope and jurisdiction of the assessing authorities to levy purchase tax is enlarged to achieve the object of the legislature and thus held as follows:

"After the amendment to Section 7-A(1)(a) recovery of purchase tax is permissible even in cases where the goods which had not suffered tax, at the time of purchase are used by the dealer and are subsequently disposed of by the dealer in circumstances where the value of the turnover relating to those goods is also subject to tax by deeming the same as forming part of the turnover of other taxable goods. Therefore, inclusion of turnover of bottles in the turnover of the petitioner relating to I.V. Fluids did not enable the petitioner to get out of net of Section 7-A as the bottles were not sold as bottles but as part of a composite unit, i.e., fluid packed in bottles. Moreover, section 7-A(1)(a) referred to the consumption or use of goods in or for the manufacture of other goods. Having regard to the nature of the goods and the need for a container in order to make those goods marketable, it must necessarily be held that the bottles used by the petitioner were bottles used in or for manufacture of I.V. Fluids. Therefore, the Tribunal was right in upholding the levy of tax on the purchase of bottles by the petitioner from the unregistered dealers."

7.4.11. Even though Mr.C.Natarajan, learned senior counsel, placing reliance on (i) HMM LIMITED & ANOTHER v. ADMINISTRATOR, BANGALORE CITY COPRN. & ANOTHER, [1989] 4 SCC 640; and (ii) MAFATLAL INDUSTRIES LTD. v. NADIAD NAGAR PALIKA & ANOTHER, [2000] 3 SCC 1, contends that the usage of bottle for filling Beer and IMFL product manufactured by them for selling the same would not, by itself, attract purchase tax, as in the case of HMM LIMITED & ANOTHER v. ADMINISTRATOR, BANGALORE CITY COPRN. & ANOTHER, [1989] 4 SCC 640,

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wherein it was held that where Horlicks transported in bulk container was repacked into the unit containers, namely glass bottles, the same would not attract octroi duty, viz., the tax on certain goods entering a town, as there was no use or consumption of the milk food within the octroi limit, we are of the considered opinion that the reliance placed on the ratio laid down in the said decisions, viz., (i) HMM LIMITED & ANOTHER v. ADMINISTRATOR, BANGALORE CITY COPRN. & ANOTHER, [1989] 4 SCC 640; and (ii) MAFATLAL INDUSTRIES LTD. v. NADIAD NAGAR PALIKA & ANOTHER, [2000] 3 SCC 1, is quite inappropriate to the facts and circumstances of the case in hand, as, in the instant case, the empty bottles were used to fill the beer and IMFL products manufactured by the assessee and sold along with container and the said empty bottles were purchased from unregistered dealers under bought note which did not suffer any tax; and the question of levying entry tax, viz., octroi duty, does not arise at all.

7.5. That part, the contention of Mr.C.Natarajan, learned senior counsel that, as per the rules of interpretation, when two opinions are possible, the one which is in favour of the assessee should be applied as the object of Section 7-A of the Act, viz., to plug leakage and prevent evasion of tax, had already been achieved for having levied tax for Beer and IMFL products along with bottles could not be appreciated in view of the amendment brought to Section 7-A(1)(a) of the Act by the Tamil Nadu Act 78 of 1986, by inserting the words "or uses", as it is a trite law that where there is no ambiguity in the provisions of the statute, it is not possible to apply any consideration based on two views of construction and to apply the construction which is more advantageous to the assessee or to give the assessee a kind of choice in the matter of adjustment, vide COMMISSIONER OF INCOME-TAX, TAMIL NADU VS. COROMANDEL STEELS LIMITED, (1981) 130 ITR 856.

7.6. Hence, applying the law laid down by the Apex Court in (i) PREMIER BREWERIES v. STATE OF KERALA, [1998] 108 STC 598; and (ii) ASSISTANT COMMISSIONER (INTELLIGENCE) v. NANDANAM CONSTRUCTION CO., [1999] 115 STC 427, which was followed by this Court in APPOLLO SALINE PHARMACEUTICALS (P) LTD., v. DEPUTY COMMERCIAL TAX OFFICER & ANOTHER, [2002] 125 STC 500, and keeping in mind the object of Section 7-A of the Act, as amended, as observed in STATE OF TAMIL NADU v. M.K.KANDASWAMI & OTHERS, [1975] 36 STC 191, viz., to plug the leakage and prevent evasion of tax with respect to purchase of empty bottles purchased from unregistered dealers under the bought note, we reject the contention of Mr.C.Natarjan that the purchase turnover for the purchase of empty bottles from unregistered dealers under the bought note is not attracted for levy of purchase tax under Section 7-A of the Act.

7.7. Question (i) is answered in affirmative, against the assessee and in favour of the revenue.

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8.1. Question:(ii) - Whether purchase tax is leviable on the purchase turnover of the empty bottles purchased by the petitioner Company to the extent of Rs.24,78,20,465.00, under Section 7-A of the Act, in spite of the clarifications dated 9.11.1989 and 27.12.2000 issued in favour of the petitioner Company by the Special Commissioner and Commissioner of Commercial Taxes, Chennai, in view of Section 28A of the Act?

8.2. Concededly, the Special Commissioner and Commissioner of Commercial Tax, in the clarification dated 9.11.1989 clarified that since the sale value of the bottles is subjected to tax at the time of sale of contents, there is no liability to tax under Section 7-A of the Act, and the said clarification had also been reiterated by the Principal Commissioner and Commissioner of Commercial Taxes in the clarification dated 27.12.2000 with respect to the assessment years 1991-92, 1993-94, 1994-95 and 1995-96, clarifying that the value of the empty bottles since has been included in the sale price of the product, the earlier clarification dated 9.11.1989 issued in favour of the petitioner Company would apply and therefore, the purchase turnover with respect to the purchase of empty bottles for filling Beer and IMFL products would not attract Section 7-A of the Act. Similarly, the Appellate Assistant Commissioner (CT), Chennai with respect to the assessment years 1986-87, 1987-88 and 1988-89 also found that the imposition of purchase tax on the purchase of empty bottles was illegal and unjustified.

8.3. Even though the clarification dated 9.11.1989 given by the Commissioner of Commercial Tax in favour of the petitioner Company was executive in nature, the subsequent clarification dated 27.12.2000 gains a statutory effect in view of Section 28-A of the Act, which was inserted by the Tamil Nadu Act 60 of 1997 and came into force with effect from 6.11.1997, which reads as follows:

> "Section 28-A. Power to issue clarification by Commissioner of Commercial Taxes:
>
> (1) The Commissioner of Commercial Taxes on an application by a registered dealer, may clarify any point concerning the rate of tax under the At. Such clarification shall be applicable to the goods specified in the application:
>
> Provided that no such application shall be entertained unless it is accompanied by proof of payment of such fee, paid in such manner, as may be prescribed.
>
> (2) The Commissioner of Commercial Taxes may, if he considers it necessary or expedient so to do, for the purpose of uniformity in the work of assessment and collection of tax, clarify any point concerning the rate of tax under this Act or the procedure relating to assessment and collection of tax as provided for under this Act.

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(3) All persons working under the control of Commissioner of Commercial Taxes shall observe and follow the clarification issued under sub-section (1) and sub-section (2)."

8.4. Of course, relying on the decision in JAYAM TRADERS v. TAMILNADU TAXATION SPECIAL TRIBUNAL & OTHERS, [2004] 136 STC 302, Mr.T.Ayyasamy, learned Special Government Pleader contends that even though such clarifications are binding on the revenue, the same would not be advantageous to the assessee in view of the clarification dated 28.1.2002, the correctness of which still remains unchallenged and therefore, the Court need not go into the same. But, we are unable to appreciate the said contention of the learned Special Government Pleader for the simple reason that there is no necessity for the assessee to challenge the said clarification dated 28.1.2002, so long as the clarifications dated 9.11.1989 and 27.12.2000, issued in favour of the petitioner Company are, admittedly, binding on the revenue, and the writ petitioner/assessee is not aggrieved by said clarifications dated 9.11.1989 and 27.12.2000. Therefore, no reliance could be made by the revenue on the decision in JAYAM TRADERS v. TAMILNADU TAXATION SPECIAL TRIBUNAL & OTHERS, [2004] 136 STC 302 to refuse the benefits of the clarifications dated 9.11.1989 and 27.12.2000 granted by the revenue to the petitioner.

8.5. By one another attempt, of course placing reliance on the decision in AMUL PLOYCURE INDUSTRIES LTD. v. TAMIL NADU TAXATION SPECIAL TRIBUNAL & OTHERS, [2004] 134 STC 526, Mr.T.Ayyasamy, learned Special Government Pleader, strenuously aruged that once a clarification is issued on 28.1.2002 clarifying that the purchase of empty bottles from unregistered dealers used for packing of beer and IMFL products manufactured by the petitioner is liable to tax under Section 7-A of the Act, the same shall have retrospective effect and it is not necessary for the Court to go into the correctness of such clarification issued. However, we do not see any rhyme or reason in the argument of the learned Special Government Pleader nor any relevancy to rely on the decision in AMUL PLOYCURE INDUSTRIES LTD. v. TAMIL NADU TAXATION SPECIAL TRIBUNAL & OTHERS, [2004] 134 STC 526, for the simple reason that in AMUL PLOYCURE INDUSTRIES LTD. v. TAMIL NADU TAXATION SPECIAL TRIBUNAL & OTHERS case, the assessee challenged the order passed by the Tribunal refusing to entertain the challenge made by the assessee to the order passed by the revenue under Section 28-A of the Act regarding the rate of interest that is applicable to the products, which they were dealing in, and it is under such context, this Court held that it is not necessary for the Court to go into the correctness of the clarification issued under Section 28-A of the Act.

8.6.1. On the other hand, the law is well settled on the point in the light of the following decisions, which are discussed hereunder.

8.6.2. The Apex Court in STATE BANK OF TRAVANCORE v. C.I.T.,

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[1986] 158 ITR 102 held that even though the clarifications issued by the revenue being executive in character cannot alter the provisions of the Act, since they are in the nature of concessions, they can always be prospectively withdrawn. In the instant case, even though the clarification dated 9.11.1989 is executive in nature, the concessions given to the assessee could be withdrawn only prospectively, but not retrospectively because, such executive circulars are binding on the authorities, as held by the Apex Court in KESHAVJI RAVJI & CO. v. COMMISSIONER OF INCOME TAX, [1990] 183 ITR 1. In KESHAVJI RAVJI & CO. v. COMMISSIONER OF INCOME TAX, referred supra, while dealing with Section 119 of the Income Tax Act, which is pari materia to Section 28-A of the Tamil Nadu General Sales Tax Act, the Apex Court held that the benefits of such circulars to assessees have been held to be permissible even though the circulars might have departed from the strict tenor of the statutory provision and mitigated the rigour of the law. That apart, the clarification dated 27.12.2000 gains a statutory force in view of Section 28-A of the Act, which was inserted by the Tamil Nadu Act 60 of 1997, which came into force with effect from 6.11.1997.

8.6.3. In COLLECTOR OF CENTRAL EXCISE, PATNA v. USHA MARTIN INDUSTRIES, [1998] 111 STC 254, three Judges of the Apex Court, held that when the Central Board of Excise and Customs made all others to understand a notification in a particular manner and when the latter have acted accordingly, it is not open to the revenue to turn against such persons on a premise contrary to such instructions, and such circulars would be binding on the department.

8.6.4. The Apex Court in PAPER PRODUCTS LTD. v. COMMISSIONER OF CENTRAL EXCISE, [1999] 112 ELT 765, while interpreting Section 37-B of the Central Excise Act, 1944 which is pari materia to Section 28-A of the Tamil Nadu General Sales Tax Act held that circulars issued by the Central Board of Excise and Customs are binding on the departmental authorities and they cannot take a contrary stand, and that the department cannot repudiate a circular issued by the Board on the basis that it was inconsistent with a statutory provision and further held that the assessee can contest the validity or legality of such Departmental Circulars or Instructions; the Department do not have a right to file an appeal against the correctness or binding nature of a circular; the Department's actions have to be consistent with the circulars; and that consistency and discipline are of far greater importance than winning or losing Court proceedings.

8.6.5. In UCO BANK v. C.I.T., [1999] 237 ITR 889, the Apex Court held that the circular issued by the revenue under Section 119 of the Income Tax Act are binding on the revenue and such circulars are meant for ensuring proper administration of the statute and they are designed to mitigate the rigours of the application of a particular provision of the statute in certain situations by applying a beneficial interpretation to the provision in question.

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8.6.6. In COMMISSIONER OF SALES TAX, U.P. v. INDRA INDUSTRIES, [2001] 122 STC 100, the Apex Court held that a circular issued by the Sales Tax authorities is binding on the taxing authorities and the taxing authority cannot be heard to advance an argument that is contrary to that interpretation.

8.6.7. In COMMISSIONER OF INCOME TAX v. KELVINATOR OF INDIA LTD., [2002] 256 ITR 1, it was held that the Board has power to issue circulars under Section 119 of the Income Tax Act and it is trite that circulars which are issued by the Central Board of Direct Taxes are legally binding on the revenue.

8.6.8. The Constitution Bench of the Apex Court in COLLECTOR OF CENTRAL EXCISE, VADODRA v. DHIREN CHEMICAL INDUSTRIES, [2002] 126 STC 122, held that if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the revenue. Similar view was taken by the Apex Court in COLLECTOR OF CENTRAL EXCISE, VADODARA v. DHIREN CHEMICAL INDUSTRIES, [2002] 143 ELT 19.

8.6.9. In COMMISSIONER OF CUSTOMS, CALCUTTA v. INDIAN OIL CORPORATION LTD., [2004] 165 ELT 257, the Apex Court held that the circulars issued by the revenue under Section 37-B of the Central Excise Act, 1944 (which is pari materia to Section 28-A of the Act) are binding primarily on basis of language of statutory provisions buttressed by need of adjudicating officers to maintain uniformity in levy of tax/duty throughout the country and not on the basis of promissory estoppel, and that when a circular remains in operation, the revenue is bound by it and cannot be allowed to plea that it is not valid nor that it is contrary to the terms of statute.

8.6.10. It is, therefore, clear that even though the clarification dated 9.11.1989 is executive in nature, the same is binding on the authorities till the concessions given to the petitioner under the clarification were withdrawn, which could be done only prospectively, viz., in the instance case, with effect from 28.1.2002, and the revenue could not refuse the benefit of the clarifications dated 9.11.1989 and 27.12.2000 in respect of levy of purchase tax under Section 7-A of the Act for the impugned assessment year 1996-97.

8.7. For all these reasons, we are convinced that even though the purchase turnover with respect to the purchase of empty bottles from the unregistered dealers under bought note can be charged for purchase tax under Section 7-A of the Act, the petitioner is entitled for the benefit of the clarifications dated 9.11.1989 and 27.12.2000 till the same is withdrawn prospectively by the clarification dated 28.1.2002 and therefore, the impugned levy of purchase tax on the purchase turnover for the purchase of empty bottles from unregistered dealers

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under Section 7-A of the Act is illegal.

8.8. Question (ii) is answered in negative, in favour of the assessee and against the revenue.

9.1. Question (iii) - Whether cash discount on the price offered by the petitioner Company to the TASMAC is taxable in view of explanation 2(iii) to Section 2(r) of the Act?.

9.2. In this regard, a reference to explanation 2(iii) to Section 2(r) of the Act, which reads as under is relevant:

> "Section 2(r) – "turnover" means the aggregate amount for which goods are bought or sold, or delivered or supplied or otherwise disposed of in any of the ways referred to in clause (n), by a dealer either directly or through another, on his own account or on account of others whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce, other than tea, and rubber (natural rubber, latex and all varieties and grades of raw rubber) grown within the State by himself or on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover.
>
> Explanation (1) ...
> Explanation (1-A) ...
>
> Explanation (2) – Subject to such conditions and restrictions, if any, as may be prescribed in this behalf-
>
> (i) ...
> (ii) ...
>
> (iii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover;
>
> (iv) ...
>
> Explanation (3) ...
> Explanation (4) ...."
>
> (emphasis supplied)

9.3. Section 2(r) of the Act defines "turnover". As per the said definition, turnover is defined as the aggregate of the sale or purchase price and accordingly, from the gross amount of such price, any cash or other discount on the price of the goods sold is deductible vide DEPUTY COMMISSIONER OF SALES TAX v. ADVANI OERLIKAN

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[1980] 45 STC 32, which was also followed in DEPUTY COMMISSIONER OF SALES TAX, ERNAKULAM v. KERALA RUBBER & ALLIED PRODUCTS, [1993] 90 STC 170.

9.4. In NEYVELI LIGNITE CORPORATION LTD. v. C.T.O., [2001] 124 STC 586, it was held that it is that sale consideration, whether in cash or otherwise, which is receivable in respect of sales made by the dealer which can possibly form part of the turnover of a dealer.

9.5. From the law as enunciated from the decisions referred supra, we are convinced that in view of explanation 2(iii) to Section 2(r) of the Act, the cash or other discount on the price of goods sold cannot be included in the turnover for levy of tax.

9.6. Question (iii) is answered in negative, in favour of the assessee and against the revenue.

VI - RESULT:

10. In result, the writ petition is allowed as prayed for. No costs. Consequently, the connected W.P.M.P. is closed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To:

1. The Commercial Tax Officer
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2. The Principal Commissioner and
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3. The Registrar
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   Tribunal, Second Floor
   Singaravelar Maaligai
   Chennai - 600 001.

+ One CC to Mr.N.Inbarajan, Advocate SR No.38580.

+ Two Ccs to Spl. Govt. Pleader (Taxes) SR No.38758.

W.P.No.25081 of 2002

10.9.2004

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